IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P Nos.26469 of 1996, 1565 and 1768 of 1997
DATED 8-2-2007

W.P.No.26469 of 1997

BETWEEN
Sri L.Satyanarayana

..
Petitioner

And

The A.P.S.E.Board rep by its Member Secretary,
Vidyuth Soudha, Somajiguda, Hyderabad
And two others.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION Nos.26469 of 1996, 1565 and 1768 of 1997

COMMON ORDER:

Petitioners, in all these three writ petitions, were engaged as Revenue Cashiers by the Rotary Club, Srikakulam. According to the respondents, revenue collection of the Electricity Revenue Officer, Srikakulam, in respect of Srikakulam Town, was

entrusted to the President of Rotary Club, Srikakulam by the respondent Board on a commission basis and, since the petitioners were not appointed by the Andhra Pradesh State Electricity Board (APSEB), there was no privity of contract between the petitioners and the A.P.S.E.B. and that the respondents herein were not obligated to give them the benefits of regular scales of pay or such other benefits, which regular employees of the A.P.S.E.B. were entitled to.

In the additional affidavit filed, the petitioners would contend that since they were selected by a duly constituted selection committee consisting of the President, Rotary International and officials of the Board and since they were engaged to discharge the functions which related to the office of the 2nd respondent, they were entitled for being given regular pay scales.

Sri P.Lakshmana Rao, learned counsel for the petitioners places reliance on **K.Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering**[1] to contend that the petitioners were entitled to equal pay under Article 39(d) of the Constitution of India on par with employees of the Board. In the said judgment, the executive instructions of the Government had given a right to teachers appointed in private institutions to claim pay scales on par with government employees. It was in

such circumstances that the Supreme Court held that the teachers employed in private institutions were entitled for the same benefit.

Rotary Club, Srikakulam is not amenable to the writ jurisdiction of this Court, under Article 226 of the Constitution of India, since it is neither a State nor an instrumentality thereof. In any event, no instructions of the Government which confer any right on persons engaged by the Rotary Club to claim pay scales on par with employees of APSEB has been brought to the notice of this Court. The question as to whether the petitioners were engaged for the work of the 2nd respondent is a disputed question of fact and, in view of the specific assertion by the respondents in their counter affidavit that the petitioners herein are not their employees, the relief claim for in the writ petition cannot be granted.

Another decision relied on by the learned counsel is **Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments**[2]. The question which arose for consideration in the said case was whether the High Court was right in accepting the conclusions arrived at by the Chief Inspector of Shops and Establishments, Hyderabad that an employer and employee relationship existed between the Silver Jubilee Tailoring House and the workers represented by the 2nd respondent therein. In the said case,

certain claims were made before the competent authority under Section 37A of the A.P.Shops and Establishment Act. Thereafter, the competent authority referred, for the decision of the State Government under Section 49 the question whether the provisions of the Act were applicable to the establishment. The Government, in turn, referred the matter to the Commissioner of Labour, who had the power to decide the question delegated to him under Section 46 of the Act. Consequent on the change of the competent authority, the Chief Inspector of Shops and Establishments heard the parties and came to the conclusion that the provisions of the Act were applicable to the establishment as an employer and employee relationship existed. Aggrieved thereby, the appellants therein filed a writ petition before this Court and the same was dismissed by a learned Single Judge and appeal there against was also dismissed by the Division Bench. The workers therein were piece rated workers. The Chief Inspector of Shops and Establishment found that they were attending the shop everyday but were paid piece rate wages. The Supreme Court examined the question as to whether the right to control the manner of work was an exclusive test to determine the nature of the relationship and even if it was found to be the test, whether the facts proved satisfied the requirements of the test.

In the present case, the petitioners' contention that they were engaged for the work of the APSEB is denied by the respondents. No finding of fact has been recorded by any statutory authority to enable this Court to examine as to whether the facts so found would entitle the petitioners herein to claim that they are employees of the APSEB. It is well settled that disputed questions of fact are ordinarily not adjudicated in writ proceedings under Article 226 of the Constitution of India. If the petitioners seek adjudication in this regard, the remedy lies elsewhere and not before this Court.

Sri P.Lakshmana Rao, learned counsel for the petitioners, requests this Court to grant permission to the petitioners to file a representation before the 1st respondent and for a direction that such a representation be considered. It is made clear that this order shall not preclude the petitioners herein from submitting a representation to the 1st respondent and if such a representation is submitted, the 1st respondent shall consider the same and pass appropriate orders thereon, in accordance with law, preferably within three months from the date of receipt of such a representation.

Subject to the above, the writ petitions fail and are accordingly dismissed. No costs.

RAMESH RANGANATHAN,J

Dt: 8.2.2007
msv.

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[1] 1997(3) Supreme 433

[2] AIR 1974 SC 37